

REMARKS

In the Advisory Action dated September 9, 2004, the Examiner states that the Reply after Final under 37 C.F.R. § 1.116 filed on August 20, 2004 has been entered into the record. Thus, for purposes of Appeal, claims 2-37, 39 and 40 remain rejected.

The Examiner states that the claim amendments have overcome the prior rejections under 35 U.S.C. § 112, first and second paragraphs for reciting the term "exclusively." However, the Examiner maintains the rejection under 35 U.S.C. § 103(a).

On page 2 of the Advisory Action, the Examiner sets forth his reasons for maintaining the rejection of claims 2-37, 39 and 40 over the prior art. Specifically, the Examiner states that the claims do not recite that capillary forces exclusively act on the flow of the fluid.

Applicants respectfully disagree with the Examiner's position, since claims 39 and 40 state that the sample liquid flows from the inflow channel into the reaction chamber exclusively by capillary force. Applicants respectfully submit that the Examiner did not properly take into consideration the recitation of "exclusively" in the last paragraph of claims 39 and 40. Applicants respectfully point out that the term "exclusively" was deleted with regard to the distributor and inflow channels, but not with regard to sample liquid flow from the inflow channel into the reaction channel.

Furthermore, Applicants respectfully submit that the

specification clearly supports use of the term "exclusively" with regard to sample liquid flow from the inflow channel into the reaction channel. Specifically, support for the recitation of "exclusively" in the last paragraph of claims 39 and 40 is found, for example, on page 5, lines 12-18 of the specification, which discloses,

To have this flow performed **exclusively** under the effect of capillary forces, it is provided according to the invention that, in each reaction chamber, notably in the entrance region of the inflow channel, structures formed on the inner side of the reaction chamber or asymmetries are provided as means for generating a capillary force enabling a flow of the sample liquid from the inflow channel into the reaction chamber. By the provision of such capillary-force generating means in the entrance region of an inflow channel into a reaction chamber, the sample liquid flow generated by capillary forces is maintained until the reaction chamber has been filled.

Thus, contrary to the Examiner's remarks, the instant claims clearly recite that capillary forces exclusively act on the flow of the sample liquid from the inflow channel into the reaction chamber. As argued in the Reply after Final, none of the prior art references relied upon by the Examiner disclose or suggest this feature of the instant claims.


For these reasons, the Examiner is respectfully requested to withdraw all rejections of record, and issue a Notice of Allowance indicating that claims 2-37, 39 and 40 are allowed. At the very least, Applicants respectfully request that the Examiner clarify his comments.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Kristi L. Rupert, Ph.D. (Reg. No. 45,702) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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